

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 4TH JANUARY 2007 / 14TH POUSHA, 1928

Crl.MC.No. 36 of 2007()

CHARGE SHEET NO.14/05 OF EXCISE RANGE OFFICE, WADAKKANCHERY.
C.P. NO.101/06 OF THE JUDICIAL FIRST CLASS MAGISTRATE'S COURT,
WADAKKANCHERY.
.....

PETITIONER:

MANEESH, AGED 25 YEARS,
S/O.MUKUNDAN MENON, MANJULA NIVAS,
DESAMANGALAM VILLAGE, THALAPPILLY TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.K.B.MOHANDAS
SRI.LELLULAL T.G.THUNDATHIL
SRI.K.A.SREEJITH

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT, ERNAKULAM.

BY P.P. SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 04/01/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

CRL.M.C.NO.36 OF 2007

Dated this the 4th day of January, 2007

ORDER

The petitioner has come to this Court with this petition under Sec.482 of the Cr.P.C. to quash the proceedings initiated against him under Sec.55(a) of the Kerala Abkari Act.

2. The crux of the allegations against the petitioner is that he was found to transport about 2 litres of arrack in a 5 litre container when the Excise party allegedly spotted him on 21/4/05. The petitioner allegedly took to his heels and could not be apprehended. The seizure mahazar was prepared on 21/4/05. The petitioner has not been arrested till now. The petitioner has come to know that the learned Magistrate has taken cognizance of the offence alleged against him and C.P.No.101/06 has been registered before the Judicial Magistrate of the First Class, Wadakkanchery. The policemen are coming in search of the petitioner to arrest him and it is on enquiry that he has come to know that such allegations have been raised against him.

3. According to the petitioner, the allegations are raised

with objectionable and mala fide motives. No incident as alleged had at all taken place. There was an exchange of words between the petitioner and some Excise officials who tried to trespass into his property. On account of that animosity, the present false allegations have been raised. The petitioner was always available at his native place and he is employed as bus driver. No attempt whatsoever was made to arrest him. The records show that the scene mahazar is prepared only on 20/7/06. The witnesses were also questioned only on and after that date. No proper or effective investigation has been conducted. In these circumstances, it is prayed that the prosecution against him may be quashed by invoking the powers under Sec.482 of the Cr.P.C. The only and transparent intention of the Excise officials is to vex and harass him. They know that the prosecution will not ultimately succeed. Their only interest is of vexing and harassing the petitioner. In these circumstances, the proceedings may be quashed, it is prayed.

4. Truth or falsity of the allegations cannot obviously be decided by this Court exercising the jurisdiction under Sec.482 of the Cr.P.C. on the materials presently available. In these circumstances, the prayer to quash the proceedings by invoking the powers under Sec.482 of the Cr.P.C. does not appear to be

acceptable or justified. However, considering the entire facts and circumstances of this case, I am satisfied that, in the interests of justice, invoking the powers of this Court under Sec.482 of the Cr.P.C. directions can be issued under Sec.438 of the Cr.P.C. to ensure that the petitioner is given an opportunity to raise his contentions in defence without having to endure the trauma of incarceration in prison before he gets an opportunity to raise his contentions.

5. In the result, this Crl.M.C. is allowed in part. Following directions are issued under Sec.438 of the Cr.P.C. in favour of the petitioner:

(i) The petitioner shall appear before the learned Magistrate on 11/1/2007. He shall be released on bail on condition that he executes a bond for Rs.25,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) He shall appear before the Investigating Officer as and when directed by him in writing to do so.

Sd/-
(R. BASANT, JUDGE)

Nan/

//true copy//

P.S. to Judge

CRL.M.C.NO.36 OF 2007 -: 4 :-